

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

JAMES EDWARD POTTS #522022 §
v. § CIVIL ACTION NO. 9:06cv222
RICKY ALLEN, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff James Edward Potts, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

The Magistrate Judge conducted an evidentiary hearing on April 24, 2007, pursuant to Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985). Potts testified concerning his claim that he had been assaulted by another inmate and that the two defendants, Officers Allen and Striblin, “encouraged” the assault and refused to report it after it occurred.

Following the hearing, after review of Potts’ pleadings and testimony as well as certified TDCJ records, to the extent that these records did not contradict Potts’ testimony, the Magistrate Judge issued a Report on April 26, 2007, recommending that the lawsuit be denied. The Magistrate Judge concluded that Potts failed to show that the Defendants were deliberately indifferent to his safety or that they otherwise violated rights secured by the Constitution or laws of the United States. Potts filed objections to the Magistrate Judge’s Report on May 31, 2007; these objections essentially reiterate the allegations of the complaint and state that these allegations set out

a claim upon which relief can be granted, but Potts does not specifically address the findings, conclusions, or recommendations of the Magistrate Judge. His objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings and documents in this case, including the plaintiff's complaint and amended complaint, the testimony at the hearing, the prison records (to the extent that these records did not contradict Potts' pleadings or testimony), the Report of the Magistrate Judge, the Plaintiff's objections thereto, and all other pleadings, documents, and records in the case. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff's objections are without merit. It is accordingly

ORDERED that the Plaintiff's objections are overruled and the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED with prejudice. as frivolous. 28 U.S.C. §1915A(b). It is further

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So **ORDERED** and **SIGNED** this **5** day of **June, 2007**.



Ron Clark, United States District Judge